COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

A Tradition of Service

DATE: January 18, 2011

OFFICE CORRESPONDENCE FILE NO. SH2254639

FROM: ERIC B. SMITH, COMMANDER
LEADERSHIP AND TRAINING DIVISION

TO: JOSEPH M. GOODEN, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: **EXECUTIVE FORCE REVIEW COMMITTEE DISPOSITION:**
DEPUTY RICHARD DIGIOVANNI #[redacted]
DEPUTY ANTHONY REGALADO #[redacted]
DEPUTY [redacted] #[redacted]
DEPUTY ERICKA GOOSEBERRY #[redacted]
SOUTH LOS ANGELES STATION

On November 3, 2009 at approximately 2218 hours, Deputy Richard Digiovanni, working Unit 35, and Anthony Regalado, working Unit 35A, received a call for service regarding a family disturbance. The call stated that the informant's [redacted] was "on drugs, possibly fighting family members."

The two deputies arrived at the location, [redacted] 162nd Street, Lawndale, and contacted Witness [redacted] Witness [redacted] told the deputies that her [redacted] Suspect Aguiar, had just left their residence, and was carrying a gun.

The deputies left the location and began looking for Suspect Aguiar. The deputies took different directions, in order to conduct a thorough search. Deputy Regalado responded to the "Alondra Golf Course," and observed a man standing in the south end of the parking lot of that location. He saw that the man fit the description that Witness Sanchez had given them. Deputy Regalado turned into the parking lot of the location.

As Deputy Regalado turned into the parking lot, he advised Deputy Digiovanni, via "direct" on his portable radio, of his observations. Deputy Digiovanni then began responding to Deputy Regalado's location. Suspect Aguiar looked in Deputy Regalado's direction, and jumped the fence located on the south west portion of the parking lot.

Deputy Regalado exited the parking lot, and began driving south in the north bound lanes of Prairie Avenue. Deputy Regalado followed the suspect, and stopped his vehicle north of the suspect's position.

He then exited his vehicle, and attempted to detain the suspect at gunpoint. Deputy Digiovanni arrived at Deputy Regalado's location, and took a position just south-west of Deputy Regalado's vehicle.

As Deputy Digiovanni was arriving, Suspect Aguiar stopped and turned towards the deputies, while retrieving a handgun from his waistband. The suspect then shot at Deputy Digiovanni, striking him in the left shoulder area. Both deputies shot back at the suspect, at which time he began running south on the east sidewalk. As the suspect ran, he turned his body and again pointed his firearm in the deputies' direction. Deputy Digiovanni, shot back at the suspect, apparently hitting him. Suspect Aguiar fell on the sidewalk, and dropped his gun, which landed approximately one foot away. The deputies requested assistance, via radio, and advised that they had been involved in a shooting.

The deputies drove closer to the suspect, positioning their vehicles just north of the suspect's position. As they waited for assisting units, the deputies utilized their vehicles for cover, and detained the suspect at gunpoint. The deputies began shouting commands at the injured suspect, not to reach for the gun.

Suspect Aguiar began moving about, and at one point reached for the gun on the ground. Fearing that the suspect would again use the gun against them, the deputies fired several rounds at the suspect. The suspect momentarily stopped moving, but several seconds later, again made another attempt to retrieve his gun. The deputies fired several more rounds at the suspect, again halting his actions.

Officers from the Hawthorne Police Department, Gardena Police Department, and the El Camino College Police Department arrived, and took positions to the south and west of the suspect. Several deputies also arrived, and they began formulating a plan to approach and arrest Suspect Aguiar. Deputy Ericka Gooseberry and Deputy [redacted] relieved Deputy Digiovanni, who left his position in order to be treated for his injuries.

As assisting deputies planned their approach of the suspect, Deputies Regalado, Gooseberry, and [redacted] along with several assisting officers, held the suspect at gunpoint. They continuously shouted to the suspect not to move, and not to reach for his gun. Suspect Aguiar complied for a short while, but suddenly ignored their orders, and reached for his gun. The three deputies, along with several of the officers, fired numerous rounds at the suspect.

Suspect Aguiar was pronounced dead at the scene. Deputy Digiovanni was transported and treated at Harbor General Hospital in Torrance. He sustained a "through and through" gunshot wound to the back, behind his left shoulder.

On January 13, 2011, the Executive Force Review Committee convened and conducted a review regarding the facts of this case. The applicable policies that were evaluated by the committee were: MPP §§ 3-01/025.00, Use of Force; 3-01/025.30, Use of Firearms and Deadly Force; 3-01/025.10, Unreasonable Force; and 3-01/050.10, Performance to Standards.

Concerning:

MPP § 3-01/025.00, Use of Force, MPP § 3-01/025.30, Use of Firearms and Deadly Force, and MPP § 3-01/025.10, Unreasonable Force, the Committee determined that the force used by Deputies Richard Digiovanni #[redacted], Anthony Regalado #[redacted] #[redacted] and Ericka Gooseberry #[redacted] was reasonable and necessary and in compliance with Department policy.

MPP § 3-01/050.10, Performance to Standards, the Committee determined that the tactics employed by all personnel in this incident were within Department Policy.

Eric B. Smith, Commander

EBS:RSP/rsp



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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June 30, 2010

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Re: J.S.I.D. File # 09-0709
L.A.S.D. File # 009-00124-3100-999

Dear Captain Smith, [redacted]

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 3, 2009, fatal shooting of Juan Carlos Aguiar by Los Angeles County Sheriff's Deputies [redacted] Richard Digiovanni, Erica Gooseberry and Anthony Regalado; Hawthorne Police Department [redacted] Hawthorne Police Officers [redacted] and [redacted] and Gardena Police Officer [redacted] It is our conclusion that all twelve deputies and officers acted in lawful self-defense and defense of another.

The following analysis is based on reports prepared by the Los Angeles County Sheriff's Department (LASD), submitted to this office on April 29, 2010, by Dawn Retzlaff and Teri

Bernstein, LASD, Homicide Bureau. The District Attorney's Command Center was notified of the shooting on November 4, 2009, at approximately 1:50 a.m. The District Attorney Response Team, comprised of Deputy District Attorney Deborah Escobar and District Attorney Investigator Senior [redacted] responded and was given a briefing and a walk-through of the scene. All four deputies and eight officers provided voluntary statements which were considered as part of this analysis.

FACTUAL ANALYSIS

On November 3, 2009, at approximately 10:18 p.m., Deputies Anthony Regalado and Richard Digiovanni responded to a "family disturbance" call at [redacted] 162nd Street in the City of Lawndale. Both deputies were single man patrol units. At the residence they contacted [redacted] She told them that her [redacted] was having some type of problem and had just left the residence armed with a handgun.[1] She provided the deputies with a physical and clothing description of her [redacted] as well as, the direction he was last seen walking.

Deputies Regalado and Digiovanni simultaneously left the location and canvassed the surrounding streets. Regalado located Aguiar in the parking lot of the Alondra Golf Course, located at the southeast corner of 164th Street and Prairie Avenue. Aguiar jumped over a brick wall and onto the east sidewalk of Prairie Avenue as Regalado drove into the parking lot. Aguiar quickly began walking southbound on the sidewalk. Regalado drove out of the parking lot onto Prairie Avenue and activated his overhead lights.

Deputy Regalado pursued Aguiar southbound on Prairie Avenue in the northbound lanes. As Regalado closed in, Aguiar stopped, turned around, retrieved a handgun from his waistband and pointed it at the deputy. Fearing for his life, Deputy Regalado fired four to five rounds at Aguiar while seated inside his patrol car. Aguiar turned back around and continued to flee southbound on the sidewalk.

Deputy Digiovanni arrived within seconds of the shots being fired. Digiovanni positioned his patrol car between Regalado and the east sidewalk. The deputies continued to follow Aguiar. Aguiar stopped a second time, turned around and fired his weapon at Digiovanni. Digiovanni returned fire while seated inside his patrol car. Digiovanni fired approximately six to eight rounds during this exchange of gunfire. The front windshield of his vehicle shattered and he was struck in the face by broken glass.

Aguiar continued to run southbound on the east sidewalk of Prairie Avenue. He intermittently stopped, turned and shot at the pursuing deputies approximately four times. Digiovanni fired six to eight more rounds at Aguiar who was hit and fell to the ground. Deputy Digiovanni was also

[1] There was a slight language barrier between [redacted] and the deputies. [redacted] did talk to a Spanish-speaker at Lennox Station on the phone before the deputies arrived. She advised them that her [redacted] was armed with a handgun, under the influence of narcotics and acting violent and "crazy."

hit by gunfire and suffered a "through and though" gunshot wound to his left shoulder blade. Digiovanni does not know at what point during the gun battle Aguiar shot him.[2] Throughout the entire incident, both Regalado and Digiovanni were requesting assistance and giving updates via their handheld radios. They advised that there had been a deputy involved shooting and that a deputy had been shot.

Deputies Regalado and Digiovanni stopped their patrol cars on Prairie Avenue just north of where Aguiar fell on the sidewalk. They took a position of cover behind the open doors of Digiovanni's patrol car and held Aguiar at gunpoint. Aguiar was lying on his stomach with his head pointed south and his feet to the north. His left arm was underneath his body and his right arm was down by his side. Aguiar had dropped the handgun on the sidewalk, but it was within reach above his head. Aguiar attempted to move closer to the gun. Both deputies gave Aguiar verbal commands ordering him not to move or reach for the weapon. He ignored the deputies' commands and continued to reach for the gun. Fearing for their lives, Deputy Regalado fired three rounds at Aguiar and Deputy Digiovanni fired three to five rounds. The deputies continued to issue verbal commands for Aguiar to stop reaching toward the gun. Aguiar reached for his gun a second time. Digiovanni fired an additional seven rounds at Aguiar.

The west side of Prairie Avenue is lined with residences directly across from where Aguiar fell. One resident began recording the incident on her video camera when the two deputies were outside of their cars and holding Aguiar at gunpoint. She was recording from a second story window. The video shows Aguiar lying on his stomach on the sidewalk. He begins to move forward. A deputy is heard ordering him not to move followed by the sound of approximately five gunshots. A deputy is then heard yelling for him to quit reaching for the gun. Aguiar's body is tilted slightly onto his right side. He reaches his left arm up over his head toward the gun as he propels his body forward with his legs lifting up off the ground. It appears as if he is searching for the gun on the sidewalk with his left hand. The audio captures the sound of approximately five gunshots. The deputies continue to order him to stop reaching for the gun.

Assisting units began to arrive from Lennox Station and four other law enforcement agencies from the surrounding area. Paramedics also arrived at the location and Deputy Digiovanni was pulled away from the scene and treated for his injuries. Deputies Gooseberry and [redacted] positioned themselves just to the right of Deputy Regalado on the passenger side of Digiovanni's patrol car and assisted him in detaining Aguiar at gunpoint. Officer [redacted] of the Gardena Police Department and Officers [redacted] and [redacted] of the Hawthorne Police Department were positioned along the right side of Regalado's patrol car. They all had their service weapons pointed at Aguiar. [redacted] and Officer [redacted] of the Hawthorne Police Department took positions of cover behind police vehicles parked on Prairie Avenue to the south of Aguiar.

[2] A fired bullet fell from Digiovanni's protective vest or shirt while he was being treated by paramedics at the scene. Ballistic testing determined that it had been fired from Aguiar's handgun.

[redacted] had his service weapon pointed at Aguiar and Officer [redacted] had a M16 A1 rifle pointed at him.[3]

Aguiar was still lying on his stomach on the sidewalk. His left hand was underneath his body and out of view. His right hand was now extended above his head and within one foot of the handgun. For approximately two minutes, deputies and officers repeatedly ordered Aguiar to stop moving and to stop reaching for the gun. During that time, Aguiar lifted his head several times and looked at the deputies and officers. He also verbally responded back to the commands being given to him. No one could hear exactly what he said due to the helicopter overhead, but Officer [redacted] described it as mouthy and confrontational. On at least four occasions, Aguiar began to reach for the gun, but stopped. Finally, Aguiar looked back at the officers standing to his north one last time, said something and smiled. He pushed his body up off the ground and reached for the gun with his right hand. Officer [redacted] described his movement as "almost a leap." Fearing for their lives, the lives of their fellow officers and for the safety of the residents in the surrounding neighborhood, Deputies Regalado, [redacted] and Gooseberry, [redacted] Officers [redacted] and [redacted] all fired multiple rounds at Aguiar in order to prevent him from obtaining possession of the gun. After this last round of gunfire, Aguiar stopped moving.

In this portion of the video recording, Aguiar is partially obscured by the responding officers standing on the right side of Regalado's patrol car. The camera operator moves her position which also prevents a clear view of Aguiar. The helicopter flying overhead and the police sirens make it difficult to hear what is being said on the street. Periodically, Aguiar's head and body is seen moving. A deputy's voice is heard but you cannot make out what he is saying. Just before the final volley of shots, the camera operator pans to the right and away from Aguiar. As she pans back, the sound of gunfire is heard at the same time as one of Aguiar's arms is seen extending out above his head toward the gun. The camera operator screams and the footage ends.

Aguiar was pronounced dead at the scene. A .32 semiautomatic Beretta pistol was recovered from the east sidewalk of Prairie Avenue, just above and to the right of Aguiar's head. The hammer was cocked, the chamber was loaded and the magazine contained two cartridges.

[redacted] Interview

[redacted] told investigators that her [redacted] had been hallucinating after a week long drug binge. She called 9-1-1 because Aguiar began chasing imaginary people around the home with a gun. He left the residence with the gun just before the deputies arrived.

[3] In addition to the deputies and officers named above, dozens more arrived at the scene in response to the assistance call. Because they were not involved in the shooting, their names are not mentioned.

Toxicology Results

A blood sample was collected from Juan Carlos Aguiar during the autopsy for analysis. The toxicology report indicated Aguiar's blood contained methamphetamine.

CONCLUSION

California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed he or others were in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal.App.3d 731; People v. Glover (1903) 141 Cal. 233; People v. Ortiz (1923) 63 Cal.App. 662.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation. Graham v. Conner, (1989) 490 U.S. 386, 396-397.

The evidence examined indicates that just before the shooting, Juan Carlos Aguiar was hallucinating and chasing imaginary people around his home with a gun. He was reportedly under the influence of methamphetamine which was verified by the toxicology report. When Deputies Regalado and Digiovanni caught up with Aguiar he attempted to kill them both by repeatedly firing his handgun at them, striking Digiovanni.

Aguiar continued to reach for his fallen handgun after he was struck by gunfire. He was fired upon each time by Regalado and Digiovanni. Aguiar was verbally confrontational and repeatedly ignored commands to stop moving when surrounded by dozens of deputies and officers. Inexplicably, with an arsenal of weapons pointed at him, he lunged for the gun one last time. Just before doing so, he said something to the deputies and smiled. It is not known what he said, but the bizarre behavior under the circumstances suggests that he knew exactly what would happen when he reached for the gun. If Aguiar was able to regain possession of the handgun and shot in any direction he would have had a high probability of hitting and killing any one of the deputies, officers or residents present in the surrounding area.

We conclude that Deputies Digiovanni, Regalado, [redacted] and Gooseberry, [redacted] and [redacted] and [redacted] all acted in lawful

self-defense and defense of another when they used deadly force against Juan Carlos Aguiar. We are therefore closing our file and will take no further action in this manner.

Very truly yours,

STEVE COOLEY
District Attorney

By *Deborah A Escobar*

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c: Deputy Richard Digiovanni, #[redacted]
Deputy Anthony Regalado, #[redacted]
Deputy Erica Gooseberry, #[redacted]
Deputy [redacted] #[redacted]

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